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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/584,107	06/22/2006	Jeong-Min Lee	L69.12-0004	1402
27367 7590 02/12/2009 WESTMAN CHAMPLIN & KELLY, P.A. SUITE 1400 900 SECOND AVENUE SOUTH MINNEAPOLIS, MN 55402				
EXAMINER GEHMAN, BRYON P				
ART UNIT		PAPER NUMBER		
3728				
MAIL DATE		DELIVERY MODE		
02/12/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/584,107

**Applicant(s)**

LEE ET AL.

**Examiner**

Bryon P. Gehman

**Art Unit**

3728

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 25 November 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above claim(s) 13-32 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☒ Claim(s) 9 and 11 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-85/86)
- Paper No(s)/Mail Date 6/22+12/8/06
- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

1. Applicant's election of Species I and identification of claims 1-12 in the reply filed on November 25, 2008 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

2. Applicant is reminded of the proper language and format for an abstract of the disclosure.

**The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words.** It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

3. The abstract of the disclosure is objected to because it is not alone on a separate sheet as required. Correction is required. See MPEP § 608.01(b).

4. Claim 6 is objected to because of the following informalities: In line 1, "one of claim 1" is ungrammatical, and "one of" should apparently be deleted. Appropriate correction is required.

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 1-12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 1, line the relationship between "a cap" referred to in line 7 is indefinite relative to "a cap" defined line 6, as it appears the latter should be the same as the prior. Accordingly, the second instance of "a cap" should be --the cap--. However, since such relates to a step of a method, it also appears to comprise double recitation.

In claim 4, lines 2-3, there is insufficient recitation to support "the rotational operation of the cap", as not all caps are rotational in operation.

In claim 5, lines 2-3, there is insufficient recitation to support "an elevating operation of the cap" or what such engenders, as not all caps are "elevated" in operation.

In claim 7, line 6, "the first material" lacks clear antecedent basis, as "first and second materials" does not distinguish a singular "first material". In line 7, "the tube portion" lacks antecedent basis.

In claim 8, line 1, "wherein seal member" is indefinite whether such refers to the previous defined seal member or some other. Also, the lack of definition of a "tube portion" renders the relationship of the elements indefinite.

In claim 9, the hook portion is insufficiently defined to allow for it to "pivot" as claimed.

In claim 11, the "tube portion" is insufficiently defined so as to render it capable of any action that it "moves upward" as claimed.

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1, 3 and 5-6 are rejected under 35 U.S.C. 102(b) as being anticipated by Leoncavallo (6,305,576). Claims 1, 3 and 5-6 are rejected under 35 U.S.C. 102(b) as being anticipated by Herbert et al. (5,257,986). Claims 1-6 are rejected under 35 U.S.C. 102(b) as being anticipated by Cohen (2,687,130)(Figures 11 and 12). Each discloses a method of mixing different materials in a pouch container (12 or 60, see column 3, lines 55-62; 1; 21; respectively) comprising the steps of storing a first material (contents of cartridge 30 or 80; 17; 24) in a spout assembly (30 or 80; 2; 44) fixed on the pouch container, separating a seal member (42 or at 84; 19 and/or 22; 43 or 45) from the spout assembly by operating a cap (46 or 94; 21; 42 or 48), thereby releasing the first material into the pouch container, and mixing the first material with a second material (contents of 22 or 64; 18; 27) in the pouch container.

As to claim 2, Cohen (Figure 11) clearly shows the first material stored in the cap.

As to claim 3, each discloses the first material stored in a space between the spout assembly and the cap.

As to claim 4, Cohen (Figure 12) discloses release of the first material by a rotational operation of the cap (48).

As to claim 5, each discloses release of the first material by an elevating (change in elevation) operation of the cap.

9. Claims 7-8, 10 and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Leoncavallo (6,305,576). Claims 7-8, 10 and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Herbert et al. (5,257,986). Claims 7-8, 10 and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Cohen (2,687,130)(Figures 11 and 12). Each discloses a structure for mixing different materials in a pouch container, comprising a spout main body (18 or 66; upper end of 2; receiving lower end of 42 or 44) provided with a spout hole (upper end of 18 or 66; at 16; open outer end of that receiving 42 or 44) through which a mixture of a first material and a second material may be exhausted, a cap (at 56 or 96; 9; 42 or 48) removably coupled on an outer portion of the spout hole and storing the first material therein, and a seal member (42 or 84; 19 and/or 22; 43 or at 46) coupled to a lower end of a tube portion (30 or 82; 10; between 42 and 43 or between 46 and 47).

As to claim 8, each discloses the seal member including a hook portion (42 between 48 and 30 or 84 housing 92; intersection of 19 and 22; free end of 43).

As to claim 10, each discloses the spout hole provided at an inner portion with a circumferential projection.

As to claim 12, each discloses a first material stored between the spout hole and the tube portion and the seal member formed of a sheet (42 or 84; 22; 43 or 46) attached on lower ends of the spout hole and tube portion, as much as such is defined.

10. Claims 9 and 11 would each be allowable if rewritten to overcome the rejections under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Shown by the cited additional art are similar structures for mixing including a spout.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bryon P. Gehman whose telephone number is (571) 272-4555. The examiner can normally be reached on Tuesday through Thursday from 7:30 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu, can be reached on (571) 272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Bryon P. Gehman/  
Primary Examiner, Art Unit 3728

Bryon P. Gehman  
Primary Examiner  
Art Unit 3728

BPG